

**STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT**

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**IN THE MATTER OF:**

**Jerry Miller,**

**James David Browning, a/k/a Dave  
Browning,**

**ER Urgent Care Management Co., Inc.,**  
and its partners, members, officers, directors,  
agents employees, affiliates, successors and  
assigns,

**ER Urgent Care Holdings, Inc.,** and its  
partners, members, officers, directors, agents,  
employees, affiliates, successors and assigns.

**File Number: 0800388**

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**ORDER OF PROHIBITION**

**TO RESPONDENTS:** James David Browning  
700 Ives Dairy Road  
North Miami Beach, FL 33179

James David Browning  
19384 SW 66<sup>th</sup> Street  
Fort Lauderdale, FL, 33332

ER Urgent Care Management Co., Inc.  
700 Ives Dairy Road  
North Miami Beach, FL 33179

ER Urgent Care Holdings, Inc.  
700 Ives Dairy Road  
North Miami Beach, FL 33179

WHEREAS, a Temporary Order of Prohibition was issued by the Illinois Secretary of State, on January 29, 2010, temporarily prohibiting the Respondents from offering or selling securities in the State of Illinois for a maximum period of ninety (90) days.

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WHEREAS, pursuant to Section 11.F of the Illinois Securities Law of 1953 [815 ILCS 5/1 *et. seq.*] (the "Act"), the failure to request a hearing within thirty (30) calendar days of the entry of a Temporary Order of Prohibition shall constitute an admission of any facts alleged therein and constitute a sufficient basis to make the Temporary Order final.

WHEREAS, Respondents **James David Browning, ER Urgent Care Management Co., Inc. and ER Urgent Care Holdings, Inc.** have failed to request a hearing on the matters contained in the Temporary Order of Prohibition within thirty (30) calendar days of the entry of said Temporary Order and the Respondents are hereby deemed to have admitted the facts alleged in the said Temporary Order.

WHEREAS, the Secretary of State, by and through his duly authorized representative, has adopted the Findings of Fact contained in the said Temporary Order as the Secretary of State's Findings of Fact as follows:

1. Respondent **Jerry Miller** ("Miller") is the Founder and Director of both Management and Holdings and has last known addresses of 700 Ives Dairy Road, North Miami Beach, FL 33179 and 16590 Northeast 26th Avenue, Apt. 403, North Miami Beach, FL 33160.
2. Respondent **James David Browning** ("Browning") is the Vice President of Investor Relations of both Management and Holdings and has last known addresses of 700 Ives Dairy Road, North Miami Beach, FL 33179 and 19384 SW 66th Street, Fort Lauderdale, FL 33332.
3. Respondent **ER Urgent Care Management Co., Inc.** ("Management") is an entity with a last known address of 700 Ives Dairy Road, North Miami Beach, FL 33179.
4. Respondent **ER Urgent Care Holdings, Inc.,** ("Holdings") is an entity with a last known address of 700 Ives Dairy Road, North Miami Beach, FL 33179.
5. In September 2000, Respondent Miller filed the Articles of Incorporation for the original ER Urgent Care Center in the State of Florida. At this time, Respondent Miller was the Founder of the company, and the sole director.
6. In March 2001, there was an amendment to the Articles of Incorporation that changed the name of the company from ER Urgent Care Centers, Inc. to ER Urgent Care Management Co., Inc. ("Management").
7. About October 2004, Respondent Miller, and others at ER Urgent Care, completed a reverse merger with a company called Di-An Controls, Inc., a publicly traded shell company. After the transaction, Di-An Controls, Inc. became ER Urgent Care Holdings, Inc. ("Holdings").
8. Once the reverse merger was complete, both Management and Holdings filed Annual Reports with the Secretary of State of Florida. These filings indicate that Management

and Holdings share the same business address at 700 Ives Dairy Road, North Miami Beach, FL 33179. Additionally, Respondent Miller was listed as a director of both Management and Holdings at that time.

9. From this point forward, Management and Holdings will be collectively referred to as "ER Urgent Care".

### **FRAUD IN THE OFFER AND SALE OF SECURITIES**

10. As early as 2001, Respondents Miller and Browning and others at ER Urgent Care began soliciting investments in a private placement of ER Urgent Care stock. The stock being offered and sold was what is known as "restricted stock". Restricted stock generally cannot be resold by investors unless they register their shares or qualify for an exemption from registration.
11. Respondents Miller and Browning, as well as others at ER Urgent Care, induced individuals to invest in the private placement offering by providing them with false or misleading information about the company. Such information included projected revenues, plans for expansion, and forged letters from individuals claiming that they will contract with ER Urgent Care for their services.
12. Through September 2008, Respondent Browning made frequent and continuous contact with Illinois residents in order to offer and sell ER Urgent Care's restricted stock. He contacted investors by telephone and by sending investors letters on the official letterhead of ER Urgent Care.
13. Additionally, through September 2008, Respondent Miller also corresponded with Illinois residents to discuss investments in ER Urgent Care, to give information about ER Urgent Care to potential investors, and to address investor concerns.
14. While he and Respondent Browning were offering and selling the company's stock, Respondent Miller was converting company funds, including investor's funds, for his own personal use.
15. For example, in January 2006, Respondent Miller used company funds to go on a vacation to Las Vegas, Nevada. Specifically, Respondent Miller spent \$2,081.77 of company funds for a room at the Mirage Hotel and Casino, and made over \$2,200.00 in ATM withdrawals from various casinos on the Las Vegas Strip. Miller also spent over \$600.00 in company funds to pay for meals at Las Vegas restaurants and to purchase tickets from a ticket vendor called "Showtickets Vegas".
16. In addition to his Las Vegas excursion, Respondent Miller routinely used company funds for a number of other non-business purposes. For example, Respondent Miller often used company funds to dine at various restaurants in the Miami area and even paid for a membership on an internet dating website called "Match.com" using company funds.

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17. Respondent Miller never disclosed to investors that he would be using company funds for his own personal expenses.
18. Respondents Miller and Browning also made misrepresentations and omissions of fact to Illinois investors regarding their investments.
19. In the course of the offer and sale of ER Urgent Care stock, Respondents Miller and Browning failed to inform Illinois investors that the stock they were receiving was in fact restricted stock. Additionally, Respondents Miller and Browning misrepresented that the stock was not restricted and was capable of being traded.
20. For example, in June 2006, Respondents Browning and Miller contacted Investor A and Investor B, two Illinois investors, regarding an ER Urgent Care stock offering. Neither investor had a prior relationship with any of the Respondents.
21. After Browning and Miller initially contacted Investor A and Investor B, both Investor A and Investor B received a letter generically signed "ER Urgent Care" that lauded the progress of the company and the opening of a total of seven ER Urgent Care centers across the country. The letter additionally stated that the company was working on further expansion.
22. In June 2006, after being solicited by Respondents Miller and Browning, Investor A invested \$20,000.00 in ER Urgent Care stock. Investor A was never informed that the stock he was purchasing was restricted stock.
23. On June 16, 2006, Respondent Browning sent a letter to Investor B confirming the amount of shares Investor B's investment would represent. Respondent Browning stated in the letter: "Please keep in mind that there are no restrictions and no conversion. When you receive it you can send it to your Broker."
24. After the date Investor B initially received the aforementioned letters, Investor B invested \$10,000.00 in ER Urgent Care stock. On June 19, 2006, Respondent Browning, holding himself out to be the Vice President of Investor Relations for ER Urgent Care, confirmed in a letter to Investor B that the \$10,000.00 investment has been received and has been placed "in the ER Urgent Care Center Preferred Stock offering."
25. In July, 2006, Investor B invested another \$10,000.00 in ER Urgent Care and this was confirmed in a July 31, 2006 letter from Respondent Browning to Investor B.
26. On July 27, 2008, Respondent Miller wrote an email to Investor B in order to respond to a complaint Investor B made to Respondent Miller regarding a dispute over \$6300.00 that ER Urgent Care owed Investor B. In this email, Respondent Miller stated that "I have a third party who is willing to give you free trading stock from, er

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[sic], to sell right away to cover your 6300 plus interest. ER is very liquid and is always trading, you have nothing to lose and everything to gain to get rid of this."

27. Investor A and Investor B were never informed prior to their purchase of ER Urgent Care stock that the stock they were purchasing was, in fact, restricted stock. Additionally, Neither Investor A or Investor B had been given a copy of any Private Placement Memorandum or prospectus regarding their investments with ER Urgent Care that accurately informed Investor A or Investor B of the restrictions that would be placed on the stock they had purchased through the stock offering.
28. The activities described above constitute the offer and sale of a security as those terms are defined in Sections 2.1, 2.5, and 2.5a of the Illinois Securities Law of 1953 [815 ILCS 5/1 *et. seq.*] (the "Act").
29. Section 12.A of the Act provides that it shall be a violation for any person to offer or sell any security except in accordance with the provisions of the Act.
30. Section 12.F of the Act states that it shall be a violation of the provisions of this Act for any person to, *engage in any transaction, practice or course of business in connection with the sale or purchase of securities which works or tends to work a fraud or deceit upon the purchaser or seller thereof.*
31. Section 12.G of the Act states that it shall be a violation of the provisions of this Act for any person to, "obtain money or property through the sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.
32. Section 12.I of the Act states that it shall be a violation of the provisions of this Act for any person to, "employ any device, scheme, or artifice to defraud in connection with the sale or purchase of any security, directly or indirectly."

### **UNREGISTERED OFFER AND SALE OF SECURITIES**

33. Section 5 of the Act provides, *inter alia*, that all securities except those exempt under Section 3 or those offered or sold in transactions exempt under Section 4 "shall be registered either by coordination or qualification prior ... to their offer or sale" in the State of Illinois.
34. Respondents failed to file with the Secretary of State an application for registration of the securities described above as required by the Act and, as a result, the securities were not registered pursuant to Section 5 of the Act prior to their offer or sale in the State of Illinois.
35. Section 12.A of the Act provides that it shall be a violation for any person to offer or sell any security except in accordance with the provisions of the Act.

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36. Section 12.D of the Act provides, *inter alia*, that it shall be a violation for any person to fail to file with the Secretary of State any application, report or document required to be filed under the provisions of the Act or any rule or regulation made by the Secretary of State pursuant to the Act.

WHEREAS, the Secretary of State, by and through his duly authorized representative, has adopted the Conclusions of Law contained in the said Temporary Order as the Secretary of State's *Conclusions of Law* as follows:

1. By virtue of this conduct, Respondents James David Browning, ER Urgent Care Management Co., Inc. and ER Urgent Care Holdings, Inc. violated Sections 12.A, 12.D, 12.F, 12.G and 12.I of the Act.
2. By virtue of the foregoing, Respondents James David Browning, ER Urgent Care Management Co. Inc., ER Urgent Care Holdings and each of their partners, members, officers and directors, agents, employees, affiliates, successors and assigns are subject to, pursuant to Section 11.F of the Act, an Order which permanently prohibits them from offering or selling securities in the State of Illinois.

NOW THEREFORE, IT IS HEREBY ORDERED THAT: pursuant to Section 11.F of the Act, Respondents **James David Browning, ER Urgent Care Management Co., Inc., and ER Urgent Care Holdings, Inc.**, and each of their partners, members, officers and directors, agents, employees, affiliates, successors and assigns are hereby **PROHIBITED** from offering or selling any securities in or from the State of Illinois.

Dated: This 4th day of March, 2010.

  
JESSE WHITE  
Secretary of State  
State of Illinois

NOTICE: Failure to comply with the terms of this Order shall be a violation of the Section 12.D of the Act. Any person or entity who fails to comply with the terms of this Order of the Secretary of State, having knowledge of the existence of the Order, shall be guilty of a Class 4 Felony.

This is a final order subject to administrative review pursuant to the Administrative Review Law, {735 ILCS 5/3-101 et seq.} and the Rules and Regulations of the Illinois Securities Act, {14 Ill. Admin. Code Ch. 1, Section 130.1123}. Any action for Judicial Review must be commenced within thirty-five (35) days from the date a copy of this Order is served upon the party seeking review.

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Attorney for the Secretary of State:

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